In The Supreme Court of the United States

OCTOBER TERM 1978

NO. 78-830

JOHN HITSON, SAMUEL MOORE, and WILLIAM MILLS,

Petitioners

vs.

MADAM AGNES BAGGETT, in her official capacity as SECRETARY OF STATE OF THE STATE OF ALABAMA

and

HONORABLE GEORGE C. WALLACE, in his official capacity as GOVERNOR OF ALABAMA

and

HONORABLE WILLIAM BAXLEY, in his official capacity as ATTORNEY GENERAL OF THE STATE OF ALABAMA

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT

Your Petitioners, Hitson, Moore and Mills respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for Fifth Circuit, dated September 6, 1978, denying relief for their full constitutional voting rights. No date of entry has yet been made.

OPINION BELOW

The Fifth Circuit Court order simply "affirmed" the District Court Order. The Fifth Circuit Order is set out on page a1 of Appendix and the Memorandum Decision of the District Court is set out on page A4 of Appendix.

JURISDICTION

This case brought by a group of minority voters to prohibit the denial of their constitutional voting privileges and rights. This civil rights action is a case brought under Title 28, United States Code 2201, and Title 28, United States Code 2202, seeking relief by declaratory judgment; under Title 42, United States Code 1983, seeking interlocutory and permanent injunction and equitable relief for the deprivation of constitutional rights, privileges, and immunities. Jurisdiction of this court is founded upon the provision of Title 28, United States Code 1343.

QUESTIONS PRESENTED

I. Whether or not New York State, or any state, may constitutionally have a system (appointing) presidential electors, whereby a splinter political party (3rd party) may RENOMINATE the candidates of one of the major political parties as its own, and therefore act as the "balance of power" and "broker" the "margin of victory" votes, and then state canvassing board, in counting votes, totals the two vote totals into one total for a particular candidate? The tiny execuitve committee serves as the focal point to leaver one major party against the other, is this constitutional? Does this renomination process violate any of the constitutional principles set out in III herein?

II. Whether or not New York State or any state can have a system of electing (appointing) presidential electors that IS AGAINST the "will or manner of desire" of the legislature? This renomination process is judicial in origin as opposed to legislative. The legislature of New York passed a "bill" to outlaw or make illegal this "brokerage" balance of power system or renomination system but the governor vetoed it Does not this clearly clash with Section I of Article II of the United States Constitution?

III. Whether or not Alabama's Code Section (1975) Titles 17-19-3 and 17-8-3, which does, and any law that deliberately sets up a "state-wide winner-

take-all" presidential elector scheme which is arbitrary and so designed to gain ALL the votes for the majority and equally designed TO DENY the vote of the minority, or any scheme that weighs the individual presidential vote according to the state's total population as opposed to the voter's individual constitutional rights, does such a law violate any of the twenty-one constitutional principles as set out in detail under this section in this brief?

Constitutional and Statutory Provisions

Section V of Articles of Confederation, from which Section I of Article 2 was taken, reads as follows:

"For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

"No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any persons, being a

delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, or any emolument of any kind.

"Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

"In determining questions in the United States in Congress assembled, each State shall have one vote.

"Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and from imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of peace."

II. Section I of Article 2 of the United States Constitution.

"Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress;"

III. Section I of 14th Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. 15th Amendment

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

V. The Cardinal Principal of the Constitution

"We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

VI. Section 4 of Article 4

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot

be convened) against domestic voilence."

VII. Code of Alabama 1975 Section 17-19-3

"The names of all candidates for President and Vice President who are nominated as provided in this chapter shall be printed on the official ballots under the emblem of their respective political parties, as filed in the office of the Secretary of State of Alabama. The names of the electors of the candidates for President and Vice President shall not be printed upon the ballots. A vote for all candidates for President and Vice President shall be counted as vote for the electors of the political party or independent body by which such candidates were named, as listed on the Certificate of Nomination or nominating petition. (Acts 1975, Third Ex. Sess. No. 138, Sec. 3).

VIII. Code of Alabama Section 17-8-3

"There shall be provided at each polling place at each election at which public officers are voted for, but one form of ballot for all the candidates for public office, and every ballot shall contain the names of all candidates whose nominations for any office specified on the ballot have been duly made and not withdrawn, as provided in this chapter, together with the title of the office, arranged in tickets under the titles of the respective political parties or independent

bodies as certified in the Certificates of Nomination. When electors for the President and Vice President of the United States are to be elected, the names of the candidates for President and Vice President shall be listed on the ballot, but not the names of the electors.

STATEMENT OF THE CASE

In New York State, the state judicial case law (as opposed to statutory law) permits third splinter parties to renominate the candidates of the major party and when the vote is tallied the totals of the major party plus the total of the splinter party is added together. This puts the third splinter party in a focal position where they are able to endorse either of the candidates, thus leveraging one major party against the other major party, as the third party can often furnish or "broker" the 'margin of victory."

The legislature of New York passed a bill to reform this practice, but this bill was vetoed by the governor.

Your petitioners in this case are qualified voters in Montgomery, Alabama. They are denied their full constitutional PRESIDENTIAL voting rights by the peculiar New York system of electing presidential electors, and also denied their full constitutional rights by the Alabama presidential elector statutes.

Petitioners bring this case to prohibit the perpetuation of the loss of their full presidential voting rights and privileges. Other than being voters and the constitutional law, statutory provisions and election systems

involved, there are no other facts in this case.

Briefly this case asks relief from three governmental defects, which are:

1. Candidates seeking election for the office of presidential elector should not be permitted to run on but one ticket (party) at a time.

2. That the system of electing presidential electors must be promulgated by the legislature, not the state courts.

3. That the authority of the legislature in establishing a system of selection of presidential electors, is limited by the constitutional protected rights of the citizens of the United States. That should a legislature decide to let the voters "appoint" the presidential electors, that the state-wide voter pyramid systems (sometimes called winner-take-all) is unconstitutional.

It should be noted that if the state-wide systems is unconstitutional, the legislature will still have several alternatives, such as:

1. Election by several variations of the district method.

2. Election by the proportional method.

3. To truly and bona fide appoint the electors.

It is submitted to the court, that because of our federated system of government, Petitioners could not join the State of New York or its officials in the orginal action in Middle District of Alabama. Petitioners offer, to either notify or join New York or its officials, or to

do whatever is the pleasure of this court.

REASONS FOR GRANTING THE WRIT

I. The CASE Law (not statutory) of New York permits a "Balance of Power Leverage System" in the election of presidential electors (and in other elections). This is accomplished by permitting a Splinter Party to have the privilege to RENOMINATE the candidates of the major parties, thereby the Splinter Party can furnish the "margin of victory" thus leveraging one party against the other party. This Renomination process serves no public good as the candidates are already on the ballot. The only purpose of this Renomination process is for political leverage, unfair political advantage and power for the Splinter Party, whereby the Splinter Party thus gains fantastic and vast political influence far beyond their normal size and influence, thus correspondingly diluting the integrity of votes of others. This manipulation by the tiny executive committee which is often under the dominance of one man, grossly violates the spirit of voting equality and the one man-vote principle, and also the principle that forbids the dilution, weakening, debasing and destroying of the integrity of votes. This "balance of power leverage system" which creates this tremendous concentration of power thus correspondingly dilutes the PRESIDENTIAL voting integrity of all other American voters, including Petitioners, and thereby violates their fundamental constitutional voting rights. This vast political power thus gained comes from the leaverage

principle, like a man picking up his 3,000 pound automobile — with a jack and LEVER. A light leverage picks up great weight.

New York's "Balance of Power leverage" system of electing presidential electors, whereby tiny Executive Committees accomplish "large miracles" and thus accumulates great power, correspondingly dilutes, debases and detracts from the votes and voting integrity and influence of other New York voters and also of your petitioners. It is like the tail wagging the dog and in this case the dog is New York's 41 electoral block votes which virtually wags the nation. The ability to control New York's 41 electoral votes creates a fantastic amount of influence over our national government, and comes close to virtually placing into the hands of the tiny executive committee which candidate of the major parties will be elected President of the United States, thus grossly undemocratic, grossly unequal, grossly unfair, and absolutely unconstitutional.

In electing the candidates for the Presidential elector, political parties should NOT have the right to renominate candidates of other political parties. This process creates focal points for leveraging one party against the other party and this manipulation creates a fertile field for corruption, secret bargaining, doubt, extreme unfair discrimination, and greatly UNequalizes voters. The process or scheme of leveraging votes is simply another process of weighing votes which have unquestionably been declared unconstitutional by the Supreme Court of the United States in Reynolds vs. Sims, 377 U.S. 533; WMCA vs. Lomanzo, 377 U.S.

633; Maryland Committee vs. Tawes, 377, U.S. 656; Davis vs. Mann, 377 U.S. 678; Roman vs. Sincock, 377 U.S. 695 and Lucas vs. Colorado, 377 U.S. 713. The New York Times speaks of the "major political miracles" of this splinter party in New York. It is simply no miracles, only a balance of power leverage system that puts the splinter party in the position of giving the "victory margin." It is a miracle for a man to pick up his 3,000 pound automobile to another who does not understand the leverage principle of jack and lever. It is sure that court understands the principle of leverage and pulleys. It is these principles that have enabled mankind to move very large objects. In this case, the small party that only has about a hundred thousand members and is controlled by a tiny executive committee, has vast and fantastic influence over the national government, making this tiny executive committee possibly the most powerful political committee in the entire United States. This tiny executive committee having the potential power and ability to swing New York's 41 block electoral votes either to the Democrats or Republicans have within their power to select the next president of the United States. Even after a president assumes the office as president and wants to run again he does not want to be VETOED by this tiny executive committee at the next election. This creates a tremendous "heavy heavy" over the President's head. Naturally the political patronage to the leaders of this tiny executive committee have been nothing short of fantastic. If this situation was not so important and critical to our country, actually it would be ludicruous

for such a tiny executive committee to have such a vast and tremendous influence over our national government. The vote weighing that was declared unconstitutional in the Reynolds vs. Sims case is actually penny-ante compared to this tremendous vote weighing scheme of leveraging votes. The Supreme Court clearly intended and did declare unconstitutional all forms of vote weighing schemes. For the convenience of the Court certain pertinent extracts from the Reynolds vs. Sims case are hereby set out:

> "The equal protection clause requires substantial equal legislative representation for all citizens in a state regardless of where they live" * * * * "weighing votes differently according to where they happen to reside," hardly seems justifiable. One must be ever aware that the constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'
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> "we do not believe the framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would run counter to our fundamental ideas of democratic government.
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> "that representative government is in essence self-government through the medium of elected representatives of the people and each and every citizen has an inalienable right to full and effective participation in the political processes of the state legisla-

tive bodies."

* * *

"all voters, as citizens of a state, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination as to the weight of their vote, unless relevant to the permissable purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens is certainly the basic aim of legislative apportionment, we conclude that the equal protection clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the 14th Amendment just as much as invidious discrimination based upon factors such as race, Brown vs. Board of Education 347 U.S. 483 or economic states, Griffin vs. Illinois 351 U.S. 12, Douglas vs. California 372, U.S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of the state legislature. And the democratic ideals of equality and majority rule, which have served this nation so well in thepast, are hardly any less significant for the present than the future.

* * *

"we are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this, 'a denial of constitutionally protected rights demands judicial protection; OUR OFFICE REQUIRES NO LESS OF US.' As stated in Go-

million vs. Lightfoot, 'when a state exercises power wholly within the domain of the state interest it is insulated from federal judicial reviews. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right'."

* * *

"TO THE EXTENT THAT A CITIZEN'S RIGHT TO VOTE IS DEBASED, HE IS THAT MUCH LESS A CITIZEN. THE FACT THAT AN INDIVIDUAL LIVES HERE OR THERE IS NOT A LEGITIMATE REASON FOR OVER-WEIGHING OR DILUTING THE EFFICIENCY OF HIS VOTE. The complexions of society and civilization change often with amazing rapidity. A nation once primarily rural in character becomes predominatly urban. Representation schemes once fair and equitable become archaic and outdates. But the basic principle of representative government remains, and must remain, unchanged. THE WEIGHT OF A CITIZEN'S VOTE CANNOT BE MADE TO DEPEND UPON WHERE HE LIVES. Population is of necessity the starting point of consideration and the controlling criteria for adjudgment in legislative reapportionment controversies."

* * *

"a citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is an official part of the concept of a government of law and not men. This is at the heart of Lincoln's verson of 'government of the people, by the people and for the people.' The equal protection clause demands no

less than substantial equal state legislative representation for all citizens, of all places as well as all races." "simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state."

This leverage system places a shadow over America's presidential election process and should be removed. With this vast concentration of power in this tiny executive committee which incidentially is virtually selfperpetuating, creates vast influence over our national government, almost anything is possible. For a moment suppose a national crime syndicate gained a working understanding with this tiny powerful executive committee. This pro-crime influence could actually affect the lives of many American citizens and voters in more ways than the average man could expect. Certainly with the national drug and crime problem as it is today, do not citizens have reason to doubt and wonder? It is asked that this court remove this unconstitutional defect that causes such a cloud over our system of election.

A second shadow over America. What if an international banking concern has a working understanding with this tiny executive committee. In the last decade or so, America has made about three hundred (300) billion dollars in loans and aid to foreign countries. The vast possibilities of corrupt international banking is absolutely mind boggling. We ask THIS COURT to remove these shadows.

A candidate for presidential elector should not be able to run on but one ticket (party).

II. The Legislature of New York enacted or passed a bill to abolish the corrupt balance of power leverage system in New York (renomination process). However, the Governor vetoed this bill. Apparently this small splinter party has accumulatd such great political pwer and influence that the State of New York is unable to extricate itself from the grasp of this third party. However, this action of vetoing the will of the legislature raises a critical and important constitutional question regarding presidential electors. The Constitution of the United States in Section 1 of Article 2 states as follows "Each state shall APPOINT, in such manner as the legislature thereof may direct." Now, considering the fact that the word "appoint" has been construed to mean "elect," then it is clear that the manner of how the electors are elected should be the WILL of the legislature. Actually, the manner in which the presidential electors of New York are elected is aginst the wishes of the legislature of New York, therefore these presidential electors are unconstitutionally elected (appointed). This constitutional question has never before arisen and is a case of first impression in either the state or federal courts, therefore your Petitioners have no cases to cite for the court to go by for precedent.

This clause, "in such manner as the legislature may

direct," is clearly a separation of the constitutional powers and neither the Governor or the Governor with his veto power nor Congress nor the President of the United States should in any way interfere with the legislature when it is APPOINTING presidential electors. Therefore, New York presidential electors being "appointed" (elected) "in a manner" clearly contrary to the wishes of the New York Legislature and are therefore unconstitutionally elected, thus this system should be barred. When such a large block of 41 presidential electors are unconstitutionally elected and this group being the balance of power as to which candidate and party will be elected President of the United States, this clearly affects the constitutional rights of all American citizens. Had Mr. Ford received their vote in 1976, he would have won.

The State of New York could not have been joined as a party defendant with Alabama in the orginal procedure because the Middle District Court of Alabama does not have jurisdiction over the State of New York or its appropriate officials. It is further mentined that should the voter pyramid system be declared unconstitional, then this in itself will largely breakup the vast concentration of power as a result of the balance of power leverage system of the splinter party in New York.

Similar to New York's example of having an "appointed" or "election" process contrary to the wishes of the legislature, the question is raised as to how many

legislatures over the country would have a different manner of electing the presidential electors if it was not for the power of the Governor's veto. Most Governors like to play politics and be big wheels and they naturally want all the votes, but now without this influence then the question is raised as to how many legislatures on their own may have selected a district method of election of the presidential electors, or for that manner a proportionate method, or maybe they might have even wished to "appoint," in its true and intended meaning, the presidential electors?

III. Question III is whether Alabama Code Section 17-19-3 and 17-8-3, which creates the state-wide voter pyramid system, violates any of the following constitutional principles:

1. The Equal Protection Clause of the 14th Amendment.
2. The Privilege and Immunities guaranteed by the 14th Amendment.
3. The Due Process Clause of the 14th Amendment.
4. The 15th Amendment.
5. The Great Cardinal Principle of the Constitution itself.

6. The One-Man, One-Vote Constitutional Principle.
7. Article 2 Section 1 of the Constitution, APPOINTMENT of electors.
8. Conflicts with Congressional District Statutes and Article 1 Section 2 of the Constitution.
9. Violates all of the Civil Rights Laws enacted by Congress.
10. Violates Article 4 Section 4 guaranteeing a Republic.
11. Violates the fundamental rights of Citizens in a Democratic Society. Any scheme where one voter has 1500% more voting strength than another voter, is constitutionally infirm.
12. It fraudulently converts thousands of votes and should be barred on principle of "ill-gotten gains" or "Clean Hands" equity doctrine.
13. Its manifest implications are abhorrent to our MAGNIFICENT CONSTITUTION and the great principles of equity and justice contained therein.
14. It operates without Constitutional Authority.
15. It assumes the status of a Constitutional Amendment, which it cannot do, therefore the Legislature has transcended its power and authority.
16. A VOTER PYRAMID SYSTEM or any SYSTEM THAT MULTIPLIES VOTES should of itself be constitutionally replusive and illegal in a Democratic society.
17. The present system of selecting the President has never been consented to by the people of the United States.
18. That constitutional principle which mandates that Constitutional Decisions are to be made and construed to make a Constitution workable.
19. The "necessary and proper clause" of the Constitution as enunciated by McCulloch vs. Maryland, 17 U.S. 407.
20. The citizen's voting privilege is a personal right, not impersonal.
21. It violates the Natural Justice (fundamentals) and decency of man.

1, 2, 3 of III.

(1) The Equal Protection clause of the 14th Amendment.

(2) The Privilege and Immunities guaranteed by the 14th Amendment.

(3) The Due Process Clause of the 14th Amendment.

For brevity, consider the excerpts of the Reynolds case that is set out under I, as repeated here. The principle that vote-weighing schemes are unconstitutional is also supported by Lucas vs. Colorado General Assembly 377 U.S. 713; Maryland Committee vs. Tawes, 377 U.S. 656; Roman vs. Sincock, 377 U.S. 695; W.M.C.A., Inc. vs. Lomanzo, 377 U.S. 633; Davis vs. Mann 377 U.S. 678.

Reynolds vs. Sims intended to and did declare unconstitutional all type schemes to depreciate the value of

one's vote. If the Reynolds case is for real, surely this includes the leverage scheme and pyramiding schemes.

The Alabama state statutes which create the voter pyramid system is an arbitrary gerrymandering scheme, that operates without constitutional authority, that is unconstitutional, and that is designed to deny the minority their fair voting influence. The case of Gomillion vs. Lightfoot, 364 U.S. 339 fully supports this.

State statutes are not insulated from federal court review when those statutes violate a citizen's constitutionally protected rights. Ray vs. Blair 343 U.S. 214; Smith vs. Allwright, 321 U.S. 649.

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The 15th Amendment.

That these statutes creating the voter pyramid system violate not only the one man-one vote principle, but violates the constitution principle prohibiting the diluting, debasing and weakening the integrity of a vote.

The pyramid system dilutes and debases plaintiff's votes. The statewide voter pyramid system violates the privileges and constitutional immunities of the plaintiff and other minorities by virtue of the 15th Amendment. Because of the large state-wide vote and the vote going all one way the minorities have been simply "swallowed up" in the huge mass of the majority and thus victimized. As a result of this, minorities had little influence in politics, therefore to make their votes felt at all, the minorities were forced to band together. It is the position of the Petitioner that this

forced banding together is an extra burden and as such is unconstitutional. The state-wide pyramid system is the single largest reason why minorities are forced to band together. This necessary extra effort in banding together or having to band together on a state-wide basis is a great burden on minorities and as such is an unconstitutional burden. Often minorities are concentrated in the city or a particular district and if the voting was on a district basis they could of their own accord make their voice felt, now they have to band with other groups. On a state-wide basis they may or may not tip the scales from one to the other party. If the voting was on a proportional basis they could control one of the presidential electors. The cases of White vs. Register, 412 U.S. 875, Burns vs. Richardson 348 U.S. 73, Fortson vs. Dorsey, 379 U.S. 733, Whitcomb vs. Chavis 403 U.S. 124, and Wright vs. Rockefeller 376 U.S. 52 all show that an at large system can be used to dilute and minimize the votes of minorities. This statewide pyramiding scheme is the GRANDADDY of all schemes to dilute and minimize the votes of minorities. Also the case of Avery vs. Midland County 390 U.S. 474 points out a similar theme. This scheme is nothing but a state-wide jerrymandering situation to prevent the minorities from casting their votes for the candidates they wish to vote for. Gomillion vs. Lightfoot 364 U.S. 339, Smith vs. Alwright 321 U.S. 649 regarding white primaries. Our nation with all its multiracial heritage, and with our dedication to a truly great democratic system, such a state-wide vote weighing scheme which packages and bales the personal civil

rights of millions of voters into a impersonal bale of votes should have no place in our democratic society. (U.S. vs. Bathgate 246 U.S. 220). This constitutional point is also a first impression for the Supreme Court, so we are unable to cite a case on point. However all reason and logic should compel the Court to rule that if on a much smaller scale this principle of diluting or swallowing up the minority vote would hold good, then surely it would hold good on an entire large state-wide basis.

5 of III.

The Great Cardinal Principle of the Constitution itself.

It is pointed out that this gross and inequitable either debasement of multiplication system of our vote violates the cardinal principle of our Constitution, that is the Preamble which says "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution for the United States of America." It is pointed out that "We the 'block' states" does not conform with "We, the people," that such gross inequities in the value of a citizen's vote is not conductive to a "more perfect union," that such great variances or debasements of a vote based upon a geographical preference is not "voting justice," neither is this great inequity in voting strength conductive to "domestic tranquility" or to the "general welfare" of all the citizens of the United States of America. When it is considered that the Spirit of the Preamble, more than anything else, obtain the consent of the governed, then the Preamble should give a constitutional command that every voter is the peer of every other voter in America. The Preamble states the cardinal principle or purpose of our magnificent constitution and any state law that sets up a scheme whereby one voter has only seven percent as much voting strenth as another voter is certainly in direct conflict with this cardinal principle and it has to be or certainly should be unconstitutional. It is pointed out that in all great systems of law that withstands the test of time, the laws are set up to obtain natural justice and the higher laws of the decency of man. It is submitted to this court that when one voter only has seven percent as much voting strength as another voter, this system does not meet the supreme test, nor does it meet the test of "equal justice under law."

Since the birth of our nation, our nation has passed several constitutional amendments and an innumerable number of civil rights statutes all designed to expand the voting rights and to give equality in voting. In the name of justice and equality of voting, it is asked why has there been thrown out such a "Rock of Gibraltor" on obtaining this equality of voting, when there is NOT a scintilla of the Constitution to support it?

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The One-Man, One-Vote Constitutional Principle

A Voter in California votes for 45 presidential electors and a voter in Vermont votes for only three. On the

question of weighing votes. consider briefly if the last voter in California was the deciding voter as opposed to the last and deciding voter in Vermont. Restating a voter of Nevada, Delaware, Vermont, North Dakota. Alaska or the District of Columbia has only a fraction of 1/15th or only seven percent as much presidential voting strength of a voter of California. A voter of California has fifteen times or 1500% the presidential voting strength of a voter of Vermont or the District of columbia. Gentlemen, is that fair? Is this equal, political justice under law? This is your decision. The state laws that create the pyramid system are actually laws that create special class or classification of voters in the United States and is therefore unconstitutional. This classification makes privileged voters of some and secondary voters out of others. This voter pyramid system or classification scheme denies a citizen the right to vote equally as peers with the rest of the American voters, either greatly diluting or multiplying his effective voting strength. The voter pyramid system has never really worked well in this country. As you know in 1840 New England was threatening sucession from this nation and 1860 the South did secede. If at that time the states had proportional or districting methods of election the local politicians would not have necessarily whipped up the sectionalism to the point that they did. We need two sides to every issue in each and every section of the country. It is entirely possible that the War of American Brothers would have never taken place if we had not been cursed with the abominable pyramid system. Needless to say, this constitutional time bomb missed only by a hair's breath of exploding in 1864 and

if it had exploded at that time it would have blown this nation into two parts, the United States and the confederacy. Lincoln had a commanding popular vote, but a shift of a few thousand in a few key states could have elected his opponent. It has been said that the voter pyramid system or this block system is like playing political craps with loaded and uneven dice, with its accompanying many evils and sectionalism; this block system magnifies and crystalizes the political polarization of our people, it magnifies and amplifies the differences of our people. It should be pointed out that it is the individual voters that vote for presidential candidates, not the inanimate states.

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Article 2 Section 1 of the Constitution, APPOINTMENT of electors.

The unconstitutional twisting of our Constitution from a representative republic to a direct democracy, without a proper constitutional amendment, has created governmental defects which have become a veritable CONSTITUTIONAL TIME BOMB. Your Petitioners are asking the court to remove some of the more harsh aspects and defects of this twisting. One historian said America "frustrated" the plans of the founding fathers in not following their plans. The fact remains that we, the citizens of America, have frustrated ourselves in not being forthright in facing the issues of the Constitution.

If the Court is going to stretch the word "appoint" to include "elect" and make it a direct democracy — the court has a moral duty to stretch the meaning

enough to make it mean to "fairly elect" and have a good workable and fair democracy.

In dernier resort, if the Court cannot order a fair system of democracy, then, Petitioners ask for that system of government that the ratifying voters gave their Constitutional consent thereto — a republic.

This case is TOTALLY different and should NOT be CONFUSED with McPherson vs. Blacker, and Williams vs. Virginia. These lengthy cases may both be summed up simply as follows: In each case the Petitioners ask the Court to ORDER the legislatures to "elect" the electors in a particular manner, and in each case the Court correctly refused. In the first case Petitioners requested an order to "elect" on a statewide basis, and the second case on a district basis. Inthe present case we ONLY seek to have declared unconstitutional the statewide pyramid presidential election law. AND also request that a presidential candidate be allowed to run on ONLY one ticket in a presidential election because of the corruption of manipulation and unfairness resulting therefrom, like the New York example.

The lawyers for Petitioners in both the McPherson and Williams cases, tried, in effect, to change this nation from a constitutional republic to a constitutional democracy (and in a particular way), and the Court properly refused. These two cases were both decided and obiter dicta written on the narrow question of law before the Court, does the legislature have to or must "elect" the electors in a particular way? The obvious and only answer was NO.

In the present case before the Bar, it is only asked

that the "twisting of the interpretation of appoint be recognized" and partially straightened and that the Alabama State statute that serves the purpose of a United States constitutional amendment which creates this statewide pyramid system be declared unconstitutional, which it clearly is.

Considering this constitutional phrase, the word SHALL really means MUST and the word APPOINT clearly means what it says, APPOINT and in "in the manner of" is really referring to the legislative procedures such as by majority of both houses or two-thirds of each house or by committees, etc. and that the Governor or no other person should have any say-so as to how the legislature was to pick or appoint the electors. The word appoint actually should not be construed to permit the legislatures to abandon and abrogate its responsibilities under the representative republican constitution. Actually McPherson and Williams supports the position of the herein Petitioners, NOT opposes our position but for the alternative relief — a republic. Never in the entire use of the English language has the word "appoint" been used to mean "elect" until the case of McPherson vs. Blacker. The word "APPOINT" IS A VERY OLD WORD BEING USED IN THE Bible and in the old dictionaries or the new dictionaries and in no sense has the word ever been used to mean the very opposite of its true meaning. The founding fathers clearly intended that the legislatures were to select outstanding men on their own and let these men pick or select the President of the United States. This is supported by the federalist paper number 68 written by Mr. Alexander hamilton who was one

of the delegates to the convention and who was incidentially General Washington's first Secretary of Treasury and who stayed in General Washington's Cabinet for the entire eight years. Also former President James Madison in federalist paper 14 explains representative republic as opposed to direct democracy. It should be noted here that the United States Senators were selected by the State Legislature instead of by the people. It took the 17th Amendment to the United States Constitution in the year of 1913 to change this situation. It is pointed out that this section of the Constitution which says the legislature shall appoint electors, comes from Section Five of the Articles of Confederation. As all of you know the Articles of Confederation was the United States' first Constitution. Under the first Constitution the legislatures had the power to recall the delegates to Congress and truly appointed them in the true meaning of the word appoint. It should be noted here that the states had operated for a decade under the Articles of Confederation and not only the founding fathers but all the people knew of this system of appointing delegates. In fact, they knew of NO other way. On page 184 of the "Journal of the Constitution" published by an Act of Congress in 1819 clearly shows that election by the people was overwhelmingly rejected.

For one moment logically examine the case law on this subject. The court has construed the word appoint to mean its opposite. Thus, the court has stretched and twisted this word entirely out of context to accommodate those who wanted a democracy but who were not willing to go to the trouble and pass a constitutional

amendment. Now, look at the very next phrase "in such manner as the legislature thereof may direct." Here apparently the court stands like a Sphinx or the Rock of Gibraltor and will not stretch at all, not even to accommodate a fair or workable democracy. The Constitution should be construed to make the Constitution fair and workable and equal to all. If the courts rule with Petitioners the legislature would stillhave three alternatives. They could elect on a variation of the district basis, or elect on a proportional basis, or they could appoint the presidential electors as the way the founding fathers intended them to do. However, in Ray vs. Blair 343 U.S. 214, it is the judicial duty of the court to see that in selecting presidential electors that the legislature did not violates the constitutional rights of the citizens and the court seized upon this case to write a line of civil rights cases, such as striking down the white primary case of Smith vs. Allwright, 321, U.S. 649.

8 of III.

Conflicts with Congressional District Statutes and Article 1 Section 2 of the Constitution.

Congress passed a congressional districting bill giving each district its own representatives. By passing this congressional districting statute, Congress said in essence "It is not enough that each state should have so many congressmen, but that each district should be entitled to its own." Then you are all familiar with the Preisler cases that state that the Constitution COMMANDS that these districts be evenly divided among the population, one aspect of the one man-one vote

principle. It is submitted likewise that the majority of the presidential electors are allotted because of the number of congressmen a state is entitled thereto. If the people in a district are entitled to have their own voice in Congress, why not their own voice in election of the President? The executive also has veto power which is in essence a form of legislative power.

9 of III.

Violates all of the Civil Rights Laws enacted by Congress.

Congress has enacted civil rights laws that are not only designed to give and protect the right to vote but also designed to protect the integrity of that vote after it has been cast. Now, in the so called winner-take-all system, this process effectively casts the minority votes for the person whom they voted against. From a practical standpoint the minority is totally excluded and you might say their vote counts no more than if they has stayed at home. Surely this system is not in the spirit of the civil rights laws passed by Congress.

10. Violates Article 4 Section 4 guaranteeing a Republic.

The two key principles that a court must look at in construing Constitutional law is the intent of the framers of the constitution (or amendment) and the intent of the citizens when they ratified the constitution. (or amendment). The Federalist Papers are so very important to our nation because they cover both of these points so well. The Federalist Papers were written by men who were leaders in the constitutional convention and they state very clearly the intent of the delegates

who framed the constitution and further, the purpose of the Federalist Papers was to explain to the people WHAT the constitution meant. The Federalist Papers makes it clear what the people thought they were receiving when they ratified the constitution. Federalist Paper No. 16, written by President James Madison, clearly distinguishes and differentiates between a representative republic and a direct democracy. Regretfully, some judges write "loose obiter dicta" and use these terms republic and democracy interchangeably. This is gross error. The representative republic places a representative in between the actions of the people and the final action of the government, with the the belief that the intermediary act of a representative may give better government and also be a buffer against intemperate and quick action on the part of the people. It is pointed out here that our nation ratified with the belief that the intermediary act of a representative may give better government and also be a buffer against intemperate and quick actions on the part of the people. It is pointed out here that our nation ratified this constitution in a republican fashion, that is, through the people's delegates at state conventions, as the people themselves did not vote on this constitution. As you know, state legislatures picked the United States Senators until the 17th Amendment to the United States Constitution was ratified. This amendment democracized the "upper house" of congress. This, an amendment, is what should have been done, regarding presidential electors. These statutes of Alabama should clash with Section 4 of Article 4 when you consider Federalist Paper 16 and 68, and page 184

of the Constitutional Convention and Section 5 of the Articles of Confederation and then consider how the United States Senators were appointed by the legislature up until Amendment 17. Deemphasizing the key word of appoint, infact changing its meaning to the exact opposite meaning, is extremely poor law interpretations and therefore, has resulted in gross inequities.

11 of III.

Violates the fundamental rights of Citizens in a Democratic Society. Any scheme where one voter has 1500% more voting strength than another voter, is constitutionally infirm.

The Declaration of Independence, which is so very much a part of this nation's history, speaks of the inalienable rights of man. When one voter has only a mere seven percent voting strength as another voter, does he have his full inalienable rights in a great democratic society?

12 of III

It fraudulently converts thousands of votes and should be barred on principle of "ill-gotten gains" or "Clean Hands" equity doctrine.

The Court knows that fraud vitiates an election. Now here is a system we use, whereby the minority vote is not only NOT cast for the candidate, but actually is cast against the man they voted for. This is one reason why this system should be barred because it is of a fraudulent nature. Look at the corrupt big city ma chines we have had in American history, if they stole a thousand votes, instead of changing one electoral vote

it may change a whole block and then in turn possibly change the election. This system is putting a bounty or bonus on corruption as opposed to integrity. Therefore if for no other basis we ask the court to bar this pyramid system on the basis of the "clean hands doctrine." Certainly it would be justified in doing so.

13 of III.

Its manifest implications are abhorrent to our MAGNIFICENT CONSTITUTION and to the great principles of equity and justice contained therein.

The obvious and manifest purpose of having the state-wide winner-take-all system in addition to silencing the minority, is to create impact in national elections. This so-called block political impact is totally void of any consideration for the constitutional rights and privileges of individuals. The weight of these block votes is another way of saying that the vote of different voters have different weights of specific gravity. Should this be true in a democratic society?

14 of III.

It Operates without Constitutional Authority.

Only a United States Constitutional amendment can properly change the manner of selecting the president from a representative republic to a direct democracy.

15 of III.

It assumes the status of a Constitutional Amendment, which it cannot do, therefore the Legislature has transcended its power and authority.

An act of the legislature cannot (constitutionally

speaking) bend the United States Constitution. At present these two Alabama Statutes do bend the United States Constitution. Statutes should bend to the Constitution, not the Constitution bend to statutes. These two Alabama Statutes serve the purpose of the constitutional amendment, changing our nation from a representative republic to a direct democracy.

16 of III.

A VOTER PYRAMID SYSTEM or any SYSTEM THAT MULTIPLIES VOTES should of itself be constitutionally repulsive and illegal in a Democratic society.

Any system of election that multiplies votes for the purpose of impact instead of considering an individual's constitutional rights should be repulsive to all the great democratic principles of law. This court has held that when a man is denied his full voting privileges he is that much less a citizen. Then it must follow that those citizens whose vote is only weighted seven percent, are only seven percent citizens.

17 of III.

The present system of selecting the President has never been consented to by the people of the United States.

It is pointed out to this court that the present system of selecting the president of the United States has never in any way been approved or ratified by the voters of this nation. It is also pointed out to this court that a system of selecting a President is a major decision and not a mere technicality. We only have this sys-

tem because a few key legislatures enacted this system and the rest of the states had to follow suit in self-defense. Both the great major political parties of this nation, the Democrats and the Republicans have, while convened at national conventions, passed resolution endorsing electoral reform. The latest Gallop Poll* indicates seventy-five percent of the people want a reform, eleven percent with no opinion, and only fourteen percent are satisfied. It is possible that only a very few of these people fully understand the electoral system, how it works and especially the renomination leverage process of New York.

*American Institute Public Opinion, Princeton, N.J. Feb. 10, 1977.

18 of III.

That constitutional principle which mandates that Constitutional Decision are to be made and construed to make a Constitution workable.

It is firmly established in Constitutional law that the judicial decisions in interpretation of the constitution should be made to make the constitution workable and fair, and further, that the technicalities that surround statutes does not surround the basic constitutional law.

Other than the "Pole Star" of constitutional law, that is What was the intent of the Convention delegates and intent of the ratifying voters, it must construe the constitution to make it workable. A SUBSEQUENT enactment by a legislature like California, to

create a block of 45 presidential votes, takes away from the voting influence in small states, including the minorities thereof. The subsequent action of the California legislature denies to the minority of their own state their full political expression. This arbitrary action of the legislature, that was never in contemplation of the framers of the Constitution, nor never in contemplation of those who ratified the Constitution, and which is so arbitrary, should not be constitutionally permitted when it infringes upon the constitutional rights of American voters.

19 of III.

The "necessary and proper" clause of the Constitution as enunciated by McCullouch vs. Maryland, 17 U.S. 407.

Marbury vs. Madison and other great cases has looked at the over all picture of what our Founding Fathers gave us. Here, at the risk of impeachment, the Court looked at it's duties, responsibilities and role under the Constitution to the new nation, and then declared they had the power to rule an Act of congress Unconstitutional. Other cases have ruled that as a nation, if our nation goes to war, our government has the necessary and proper constitutional powers to properly wage that war. That if our nation acquires western lands, it had the "necessary and proper" power to administer those lands and if it desires, to create new states therefrom. As a young nation it had this "necessary and proper" authority to expand and grow.

Now in THIS CASE we submit to THIS COURT

that the very existence of our government depends upon a system of election, and if our government is to survive, our government must have the power to protect the election processes from manipulations, corruption and violence.

This Court has the full and total Constitutional Responsibility to protect the Full Constitutional privileges and immunities of all citizens in all states. Furthermore THIS COURT has the full and total Responsibility to our national government to see that the election processes do not become so warped that someday they may break down.

20 of III.

The citizen's voting privilege is a personal right, not impersonal.

The United States Supreme Court, in U.S. vs. Bathgate, 246 U.S. 220 held that the fundamental voting right is a personal right to the voter. Therefore the vote should not be sent through a process to make it totally impersonal as the present state-wide-block process. The voter pyramid system, in effect, bales all votes in an entire state in one bundle, as you would bale up a bale of cotton. Surely it cannot be said when all these votes are baled up in one huge block that their personal vote is still personal. The personal vote is often effectively cast against the way the individual voted.

21 of III.

It violates the Natural Justice (fundamentals) and decency of man.

Man's basic sense of Justice simply does not approve

of a weighted vote of only seven percent. Such schemes violate common and fundamental decency.

Any voting scheme to lever, pyramid, or any scheme to overbalence or underbalance the weight of votes to this extent is and should be unconstitutional as it violates the American fundamentals of EQUAL JUSTICE UNDER LAW.

Petitioners ask for themselves and for their nation, JUSTICE FOR ALL.

CONCLUSION

Two centuries from now, students of law will be looking at your decision today. Let us look back two centuries, Washington and the Founding Fathers met for the purpose of revising and correcting the defects of our nation's first constitution. However, since the Articles of Confederation was so loose, with so many defects, the convention realized the need for a new constitution. Therefore, you might say, they acted ultra vires, outside their scope of authorization by congress. In brief, the members of the convention saw a great need for their country, and they fulfilled that great need. These men are honored because they met the needs of their country, not because they avoided the needs. Look at Chief Justice John Marshall and his court. He was not the first Chief Justice, but why do we hold him in such high esteem and great honor today simply because he and his court saw a great need for this nation and met it, as fearless and honorable

men. As in that great case of Marbury vs. Madison, suppose they said "No jurisdiction, case dismissed."

No case has ever been brought to this court in such a way as to give the Supreme Court full plenary review over the process of selecting the President of these United States. YOUR HONORS, HERE IS THAT case. I was careful in drawing the complaint, asking relief in the alternative, so as to give the Court the widest possible leeway.

The unconstitutional twisting of our Constitution from a representative republic to a direct democracy, without a proper constitutional amendment, has created governmental defects which have become a veritable CONSTITUTIONAL TIME BOMB. Your Petitioners are asking the Court to remove some of the more harsh aspects and defects of this "TWISTING." Some day these defects may explode in the fact of a future generation.

In all candor, if this court rules with us some people are going to be upset. Yes, those few who are in the position of leveraging other voters, those special class voters, those in a few key states who wrongfully, but nevertheless who can play big-wheel at the political conventions, but the great mass of American people want equity, fair play, impartiality, and political justice for all. YES, IF THIS COURT RULES WITH US, THE MAJOR POLITICAL PARTIES WOULD BE FREE TO NOMINATE THEIR LEADERS FOR THEIR NATURAL LEADERSHIP ABILITY, NOT BECAUSE THEY CAN CARRY A KEY STATE.

If the Court can "stretch" the word "appoint" to mean "elect" (its opposite meaning) then it has a moral

duty to "stretch" it to mean fairly elect — and preserve the constitutional rights of all persons in all states. If we cannot have a FAIR system of direct democracy, then we ask IN DERNIER RESORT for that system which the people of the United States gave their con stitutional consent thereto — a representative republic. Constitutions should be interpreted to make the Constitution workable and fair. And this means justice to all citizens in all the states, not just New York and California. The crux of the problem is that state "election laws" pertaining to Presidential electors serve the purpose of Constitutional amendments — which they cannot or constitutionally should not do.

THESE LEVERAGE AND PYRAMIDING SCHEMES RUN COUNTER TO ALL OUR FUNDAMENTAL IDEAS OF DEMOCRATIC GOVERNMENT.

The vicious, outrageous, leverage system as practiced in New York State, should be unthinkable in a modern democratic society. This scurrilous balance of power system that surreptiously subrogates the WILL of the plurality of voters of that state, to the WILL of a tiny self-perpetuating executive committee, is nothing short of criminal. It is fraudulent in concept, corrupt in practice, has NO moral justification for existence, and absolutely NO constitutional basis for existence WHATSOEVER. The so-called "miracle politics" the New York Times writes about is only and nothing but leverage and great vote-weighing manipulations, a fraudulent scheme that men of good conscience should not tolerate one second.

Your Honors, please remember your decision is very

decisive either way you decide, a positive reaction will remove these governmental defects; a negative decision will by legal precedent lock this Constitutional Time Bomb close to the heart of our government until it explodes in the face of a future generation.

For minorities whose strength is generally in a particular district, the state-wide process makes undue and extra difficulties to have access to the democratic processes. The state-wide presidential system is the granddaddy of all arbitrary dilution principles. This system is invidious discrimination per se.

There is not a scintilla of evidence, nor a vestage of proof that our nation was constitutionally born a direct democracy instead of a representative republic. Therefore since we do have a democracy in election of the Presidency it should be a fair and equitable one. For the Court to close its eyes on this case is to perpetutate and condone the gross curruption of manipulation of men' precious fundamental voting rights and to lock in by precedent the pyramiding scheme that weighs votes at a ratio of 15 to 1, a voting absurdity.

Attention of the Court is pointed to the principle that power is the rival of power itself and that this is a very definite intangible force in this universe. That the observance of this "force-principle" is often overlooked by the unobservant or unreflective minds of most men as this force-principle is like electricity or leverage principle, love or hate power — unforeseen until in action. That the development of this leverage power system of New York is of recent vintage, that as this great concentration of power continues to grow then rival power factors will appear on the American scene as a "Cor-

rective force." This corrective force will probably take the form that is repulsive to the democratic ideals of life. Such rival power will come as surely as the sun will rise in the sky, unless this unfair and dangerour concentration of power is itself removed. This corrective-rival-power may bring far more than it purports to correct. It will be extremely SHORTSIGHTED for men who believe in democratic ideals not to correct the great wrongs of manipulation of man's fundamental voting rights.

Out Founding Fathers NEVER, in any way gave their CONSENT to our present abominable system of electing the President. Recognizing that the system by whatever means, by which any nation chooses its President, is a major part of its constitutional government PROCESS, not a mere technicality, the system should be "consented to" by the people, the basis of all constitutional laws. It is by the consent of the people that constitutions derive authority over the people.

The Supreme Court of the United States, as our sole and final guardian of our Constitutional rights, has the moral obligation to protect and preserve these constitutional rights of all individuals in all states. The system of electing (appointing) electors by a legislature cannot infringe the constitutionally protected privileges, immunities, and rights guaranteed by the constitution.

Suppose Lincoln had said, A government of unequal people, by unequal people, for unequal people, but with the leverage and pyramid system of voting, this is EXACTLY what we have.

THE VERY EXISTENCE OF OUR GOVERN-

MENT DEPENDS UPON AN ELECTION SYSTEM THAT IS FREE FROM MANIPULATION, CORRUPTION AND VIOLENCE.

IF OUR NATION HAS THE RIGHT TO EXISTENCE, THEN THIS COURT HAS THE RIGHT AND DUTY TO SEE THAT THIS SYSTEM IS FREE OF MANIPULATION AND CORRUPTION. THE PRESENT SYSTEM IS AN OPEN DOOR TO FRAUD AND CORRUPTION.

The New York renomination process makes legal a system that is not only corrupt and unfair, but it brings out and emphasizes the worst characteristics of politicians, secret bargainings, trading, manipulations, and great pressuring for the "victory margin" of votes. Is THIS the product that our great democratic ideals and principles are to produce?

As your Honors know, no nobler document has ever been drafted by mankind than our Constitution. Our magnificent Constitution is the legal embodiment of America's dream of freedom and equality. I beseech each Justice not to let petty legislators UNconstitutionally tarnish this magnificent constitutional masterpiece.

RESPECTFULLY SUBMITTED,

LEA HARRIS
ATTORNEY FOR PETITIONERS
139 Lee Street
Montgomery, Ala. 36104

APPENDIX

INDEX TO APPENDIX

FIFTH CIRCUIT COURT ORDER

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 78-1667
Summary Calendar*

JOHN HITSON, et al.,
Plaintiffs-Appellants,

v.

MADAM AGNES BAGGETT, etc., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

September 6, 1978

Before BROWN, Chief Judge, COLEMAN and VANCE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21. ¶

*Rule 18, 5 Cir.; see *Isbell Enterprises, Inc.* v. *Citizens Casualty Company of New York*, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

¶See *NLRB* v. *Amalgamated Clothing Workers of America*, 5 Cir. 1970, 430 F.2d 966.

ORDER OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

JOHN HITSON; SAMUEL MOORE; and WILLIAM MILLS,

Plaintiffs.

v.

MADAM AGNES BAGGETT, in her official capacity as Secretary of State of the State of Alabama; HONORABLE GEORGE C. WALLACE, in his official capacity as Goveror of Alabama; HONORABLE WILLIAM BAXLEY, in his official capacity as Attorney General of the State of Alabama,

Defendants.

CIVIL ACTION NO. 78-15-N

ORDER

In accordance with the memorandum opinion entered in this case this date, and pursuant thereto, it is ORDERED that plaintiffs' complaint be and is hereby dismissed for failure to state a claim upon which relief can be granted.

It is further ORDERED that the costs of this action be and are hereby taxed against plaintiffs.

Done, this 8th day of March, 1978.

S/Frank Johnson
District Judge

MEMORANDUM OPINION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

JOHN HITSON; SAMUEL MOORE; and WILLIAM MILLS,

Plaintiffs.

v.

MADAM AGNES BAGGETT, in her official capacity as Secretary of State of the State of Alabama; HONORABLE GEORGE C. WALLACE, in his official capacity as Governor of Alabama; HONORABLE WILLIAM BAXLEY, in his official capacity as Attorney General of the State of Alabama,

Defendants.

CIVIL ACTION NO. 78-15-N

MEMORANDUM OPINION

This is a civil rights action brought under 42 U.S.C. 1983. Jurisdiction is founded on 28 U.S.C. 1342. Plaintiffs are John Hitson, a citizen of the United States with Indian ancestry, and Samuel Moore and William Mills, citizens of the United States who are black. Defendants include George C. Wallace, Governor of Alabama; William Baxley, Attorney General of Alabama; and Agnes Baggett, Secretary of State of Alabama. Each is sued in his or her official capacity. In their complaint, plaintiffs charge that Alabama's present "manner and system" of selecting presidential electors violates their constitutional rights.

The case is now submitted on defendants' motion to dismiss for failure to state a claim upon which relief can be granted.

The Constitution provides for the election for the president in the following language:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled to in the Congress . . .
>
> The Electors shall meet in their respective states, and vote by ballot for President . . . and transmit [the tally of their votes] sealed to the seat of the government of the United States, directed to the President of the Senate; — . . . The person having the greatest number of votes . . . shall be president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers . . ., the house of representatives shall choose . . ., the votes [being taken] by states . . .
> U.S. CONST. art. II, 1, cl. 2, amend. XII.

In Alabama, as in nearly every other state, the Legislature has directed that the state's presidential electors be "appoint[ed] through a statewide popular election. Candidates qualified to run in the state's presidential election submit to appropriate state authorities a list of electors pledged to support their candidacy. The state's presidential contest is really a contest among these slates of electors. A vote for a particular presidential candidate is counted as a vote for the slate of electors pledged to support him. The slate of electors which receives the greatest popular support is in the state's presidential election becomes the slate which casts the state's electoral votes.

In their complaints, plaintiffs raise several objections to this system. First, they contend that the nationwide use of the "manner and system" of selecting presidential electors employed in Alabama results in invidious discrimination among the voters of the several states. Plaintiffs contend that, as a result of the nationwide use of this system, when a citizen of a large state casts his vote for president, it carries more "weight" than the vote of a citizen of a small state. This is because, according to plaintiff, his vote is "multiplied" by a larger number of presidential electors than is the vote of the citizen of a small state. Thus, according to plaintiffs, a citizen of a state like California, with 45 electoral votes, has his single vote for president "counted" 45 times, whereas a citizen of a state like Alabama, with only 9 electoral votes, has his presidential vote "counted" only 9 times. Thus, according to plaintiff, a citizen of a state the size of California has 500 percent more influence in affecting the outcome of the nation's presidential election than does the citizen of a state the size of Alabama.

The court has serious reservations concerning the logic of plaintiffs' arguments. Nevertheless, even were plaintiffs' contentions logically sound, they would not state a good claim for relief. The discrimination of which plaintiffs complain [if it is discrimination] is a product of the constitutional mandate that our president be elected through an "Electoral College". As such, it is a type of "discrimination" specifically sanctioned by the Constitution. *Cf. Williams* v. *Virginia State Board of Elections,* 288 F. Supp. 622 (E.D.Va. 1968) (three-judge ct.), *aff'd mem.* 393 U.S. 320 (1969). Thus, while this "discrimination" may b considered by some to be unfair, it is hardly "unconstitutional".

Second, plaintiffs contend that, because of its state-

wide and at-large features, Alabama's electoral scheme for the selection of presidential electors discriminates against minority voters. Plaintiffs reason that, if Alabama's presidential electors were selected on a district basis, minority voters, because of their geographic concentration, could control the selection of at least one or more of the state's electors. Under Alabama's present scheme for the election of presidential electors, plaintiffs contend, minority voters do not have a determinative voice as to the selection of any one elector. By not structuring its election for presidential electors on a district basis so as to afford minority voters the opportunity to elect at least one presidential elector, plaintiffs argue, Alabama has violated plaintiffs' constitutional rights.

There is no basis for plaintiffs' argument that plaintiffs' rights as minority citizens have been violated because Alabama has failed to structure its election for presidential electors on a district basis. It may be true, as plaintiffs argue, that if Alabama conducted its election for presidential electors on a district basis, minority voters would have the electoral power to control the selection of at least one presidential elector. However, that Alabama has not chosen to so structure its electoral scheme does not violate plaintiffs' rights. No minority group has a right under the Constitution to insist that state electoral systems be designed, where possible, to give its members electoral control over the selection of persons for particular political See *Whitcomb v. Chavis,* 403 U.S. 124 (1971); *Fortson v. Dorsey,* 379 U.S. 433 (19675); *David v. Garrison,* 553 F2d 923 (5th Cir. 1977). Moreover, a state is free,

under the Constitution, to conduct elections on a statewide or at-large basis so long as the electoral system it establishes does not "operate to minimize or cancel out the voting strength of (minority voters)." *Fortson v. Dorsey, Supra,* at 439; *Whitcomb v. Chavis, supra; David v. Garrison, Supra.* Here, there is no contention that Alabama's electoral scheme for the selection of presidential electors operates in such a manner. Accordingly, plaintiffs' claim that the statewide and at-large features of Alabama's election for presidential electors violates the rights of minority voters fails to state a good basis for relief.

Finally, plaintiffs contend that the Constitution prohibits Alabama from selecting presidential electors by popular election. This contention is two-pronged. First, plaintiffs argue that, because the Constitution provides that presidential electors be "appoint[ed]" by the several states, it is unlawful for Alabama to provide for their selection by popular ballot. Second, plaintiffs contend that the Constitution's guaranty of a republican form of government to the several states is a prohibition on the use of "direct democracy" for the selection of presidential electors. See U.S. CONST. art. IV, 4. Both these contentions are without merit. "[T]he word 'appoint' is not the most appropriate word to describe the result of a popular election . . . [B]ut it is sufficiently comprehensive to cover that mode, and was manifestly used [in Article II, Section 1 of the Constitution] as conveying the broadest power of determination." *McPherson* v. Blacker, 146 U.S. 1, 27 (1892). Thus, consistent with the Constitution, a state may provide for the selection of presidential electors

"through popular election . . . or as otherwise might be directed." Id, at 28 (emphasis added). The guaranty clause is not to the contrary. "[T]he distinguishing feature of (the) form (of government guaranteed in Article IV, Section 4] is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies." In re Duncan, 139 U.S. 449 (1891). By no stretch of the imagination does Alabama's "manner and system" of selecting its presidential electors violate these tenets of government.

Therefore, the Court finds, defendants' motion to dismiss should be granted.

An order will be entered accordingly.
Done, this the 8th day of March, 1978.

S/Frank Johnson
District Judge

POINT OF ERRORS OF DISTRICT COURT ORDER

E1. The District Court Order is on its face "in error" because it fails to answer some of the fundamental Constitutional issues in this case. This Order totally side steps or ducks basic fundamental Constitutional issues such as the manipulation or renomination process in New York State's election process which creates an unfair and fantastic amount of political leverage power in a third splinter party. This New York State system of

leveraging votes is a fabulous "vote weighing" scheme that not only dilutes and weakens the integrity of the plaintiff's presidential votes in Alabama but all American voters everywhere. For the District Court to totally ignore this critical issue is to perpetuate and continue the gross debasement of the presidential votes of the plaintiffs and millions of other American voters. Paragraph 48A of complaint clearly challenges the constitutionality of this extreme and ridiculous manipulation undemocratic "vote weighing" scheme.

This Honorable Court must keep in mind that when this splinter party manipulates the block of 41 presidential elector votes of New York they may have manipulated the presidential elector vote of the entire nation.

E2. The District Court Order should further and also be "prima facie" in error for ducking another vital Constitutional issue, that is; whether or not New York's block of 41 presidential electoral votes are unconstitionally elected (or appointed).

The Legislature of New York passed a bill abolishing the corrupt manipulation process, that is RENOMINATION of major party candidates by other political parties and this bill was vetoed by the Governor of New York.

This RENOMINATION process serves no public good, only for the purpose giving leverage power to splinter parties. By having a system of appointing (electing) presidential electors "in such manner as the Legislature thereof may

direct" which is against (repeat) against the will of the Legislature is a clear clash with this constitutional phrase. The Court should not confuse the word "state" with the word "Legislature", they are quite different.

E3. The District Court Order is in error for treating the ruling Supreme Court case of Reynolds vs. Sims as though it did not exist, regarding vote weighing. This pertains to the New York renomination manipulation process as well as Alabama's (and every state's) statewide winner-take-all (voting pyramid system) which obviously weighs votes.

E4. The District Court Order is in error for treating the official "Journal of the Constitutional Convention" published by an Act of Congress with total silence, as though it did not exist.

E5. The District Court Order is in error for using a Texas murder trial case (In re Duncan) as a precedent for a case to ascertain whether or not certain fundamental voting rights are constitutional. While both rights are extremely and vitally important, they are not similar enough to be a precedent for each other.

E6. The District Court Order is in error for refusing to recognize the true and correct historical and factual origin and meaning of the Constitution of the United States pertaining to the system of selecting the President of the United States especially the word "appoint" and the phrase "in such manner as the legislature thereof may direct".

E7. The District Court Order is "in error" as it badly misconstrues the obiter dictum in the McPherson and Williams cases.

E8. The District Court Order is in error in failing to follow established constitutional principles in interpreting the constitution. A constitutional panorama of the issue or issues involved must be considered and not take off on a narrow tangent from a misconstrued phrase of obiter dictum.

E9. If multimember districts on a city or county district basis are objectionable to the courts, then surely it must be objectionable to the courts to have giant district the size of an entire state, which contains all the objectionable districts. The Court Order is "in error" for failing to consider this.

E10. District Court Order is "in error" as it implies plaintiffs contend that minorities should have "its members have electoral control" over certain offices. Plaintiffs point out very specifically that they have never contended that there should be a mathematical correlation between the number of the minorities and the number of elected officials, or have control over any office. But they do complain when a system grossly hinders and inpinges upon the rights of minorities to have legal access to the process of democracy, which the order failed to take cognizance thereof. This winner-take-all scheme obviously perpetuates an existent denial of access by racial minority to the political process. A quick look at the number of blacks who have been elected presidential

electors of all states in the entire history of this nation would discloser at most, only a handful. Any such denial would only be a denial of reality itself. The very purpose, the very essence of this so-called winner-take-all system is plainly to "disfranchise the minority," all kinds. The entire principle of dilution of votes is in essence that the minority is swallowed up by the large majority. Therefore surely if these constitutional principles apply to city districts and country districts if there is any logic or justice at all, these principles must apply on a large statewide "district" basis.

E11. The District Court Order which states "the discrimination — is a product of the constitutional mandate that our President 'be elected' through an electoral college" is simply one of error.

E12. The plaintiffs have clearly alleged and by their complaint have shown a grave damage to their constittuional voting privilege in respect to their presidential vote. That the present statewide jerrymanding voting scheme violates not just one but twenty different constitutional principles of law, all of which the District Court Order did not recognize.

CONSTITUTIONAL CONVENTION

"Excerpts from the Official "Journal of the Constitutional Convention", authorized by an act of Congress in 1818. Pages 183, 184. Action of delegates in Convention on July 17, 1787.

"On the question to agree to the first clause of the ninth resolution reported from the committee of the whole house, namely,

'that a national executive be instituted to consist 'of a single person'

It passed unanimously in the affirmative.

It was moved and seconded to strike the words 'national legislature', out of the second clause of the ninth resolution reported from the committee of the whole house, and to insert the words 'the citizens' of the United States'

Which passed in the negative.

YEA Pennsylvania

NAYS Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia.

FEDERALIST PAPER

The Federalist Number 68 by Alexander Hamilton

The Method of Electing the President

"To the People of the State of New York:

The mode of appointment of the Chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even designed to admit that the election of the President is pretty well guarded. I venture somewhat further, and hesitate not to affirm that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the disadvantages the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such com-

plicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of several, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choise of one who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, then if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made

the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and SOLE PURPOSE OR MAKING THE APPOINTMENT. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in the office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his reelection to

depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrique, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that

there will be a constant probability of seeing the station filled by characters preeminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says:

"For forms of government
let fools contest —
That which is best administered
is best," —

yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good adminstration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange,

in regard to the State from which he came, a constant for a contingent to vote. The other consideration is, that as the Vice-president may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution as of this State. We have a Lieutenant Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President."

PARAGRAPHS OF COMPLAINT

Paragraph 9 of Complaint

And further, that the voters of New Mexico, Alaska, Hawaii, Nevada, District of Columbia, Idaho, Montana, Wyoming, North Dakota, South Dakota, Delaware, Vermont, and New Hampshire vote for only three or four Presidential electors, which means that a voter in the geographical area of California or New York has at least ten times or 1000% more Presidential voting strength or privilege than a voter in the herein named states. Further, a voter of California has 15 times or 1,500% the Presidential voting strength (right or privileges) as a voter of his neighboring state of

Nevada, Delaware, Vermont, North Dakota, Alaska or the District of Columbia. Restating, a voter of Nevada, District of Columbia, Delaware, Vermont, Wyoming, North Dakota or Alaska has just only the fraction of one-fifteenth (1/15) or only seven percent (7©) as much Presidential voting strength or right as a voter of California.

Paragraph 10 of Complaint

That this BLOCK SYSTEM creates special class or classifications OF VOTERS in the United States, and is therefore unconstitutional, grossly violating the Spirit of the Preamble and Article Four Section Four of the Constitution and the Fourteenth and Fifteenth Amendments thereof. That this classification of voters makes 'privileged voters' of some and 'secondary voters' out of others, making some one-fifth (1/5) or one-fifteenthe (1/15) voters This block or classification scheme denies a citizen the right to vote equally as PEERS with the rest of the American voters, either greatly diluting or multiplying his effective voting strength.

Paragraph 12 of Complaint

That the large BLOCK SYSTEM frustrates minority groups by "victimizing or submerging" their vote in the great mass of the whole thus forcing minority groups to band together and "group vote" in a vain effort to prevent their vote and influence from being "swallowed up"

which is a form of disfranchisement. The BLOCK SYSTEM has not only frustrated minorities, but whole states and even sections of our country until a monster "Time Bomb" has been created. This illegal BLOCK SYSTEM has created impact against impact, force against counter-force, and fear against fear, thus becoming the grotesque abomination of the American political system.

Paragraph 13 of Complaint

Plaintiffs show that the BLOCK SYSTEM has never worked well. That the totally unnecessary War of American Brothers of 1861 was brought on by accumulated and amplification of Sectionalism channeled through the BLOCK PRESIDENTIAL SYSTEM. That this CONSTITUTIONAL TIME BOMB exploded in the election of 1860 and sent brave young men, from every state in the Union, to their early graves in the WAR OF AMERICAN BROTHERS.

Paragraph 14 of Complaint

That this CONSTITUTIONAL TIME BOMB missed only by a hair's breath of exploding again in 1864, and if it had exploded at that time, would have blown our country into two nations, the United States and the Confederacy.

Paragraph 15 of Complaint

The BLOCK PRESIDENTIAL ELECTORAL SYSTEM is nothing but a large jerrymandering

invidious scheme to eliminate all minority voting, be the minorities racial, religious, or political, for the purpose of making the ruling Politicians in a few large states political 'POWER BROKERS' or 'KING MAKERS' at the expense of the general public, and as such is unconstitutional as it violates the Constitutional rights, privileges and immunities of Complaints, and as such violates the Preamble, Article Four, Section Four of the Constitution, and the Fourteenth and Fifteenth Amendment thereof, and other constitutional provisions hereunder. The present system is used ONLY because of the dictates of a few 'key states' and a DEFENSIVE mechanism by the rest of the states. Most regretfully the BLOCK SYSTEM is like a channel or pipe through which the stream of public expression flows into governmental reality. That the BLOCK or VOTER PYRAMID SYSTEM is harshly arbitrary and capricious on part of the legislature, and it violates the Constitutional Civil Rights of Complainants. This system not only suppresses, but actually excludes all minority votes, including all racial, religious and political.

Paragraph 16 of Complaint

The BLOCK SYSTEM is like playing 'political Craps' with loaded and uneven dice, with its accompanying many evils of sectionalism; the BLOCK SYSTEM magnifies and crystalizes the political polarization of our people, it magnifies and amplifies the differences of our people.

Paragraph 17 of Complaint

It is the individual voters who vote for Presidential candidates, NOT the inanimate states. Any system or scheme of counting votes that has a basis of wrongfully conversions of votes from one candidate to that of another candidate is morally bankrupt and such an invidious scheme should not be able to find support in law and our MAGNIFICENT CONSTITUTION. Fraud voids elections and this state-wide winner-take-all presidential scheme is basically fraudulent. This scheme, that is so fundamentally unfair, pertains to the fundamental rights of the voters and citizens and creates deep seated frustrations among the short-changed and partially disfranchised voters.

Paragraph 18 of Complaint

The BLOCK SYSTEM OR VOTER PYRAMID SYSTEM puts a great inducement or bounty for political fraud or political corruption, such as, if a big city political machine changes 1,000 votes, instead of possibly changing one electoral vote, it may change a whole block of 10, 26, or 45 electoral votes. We do NOT know how many blocks of Presidential elector votes have been stolen in our country's history. That the BLOCK SYSTEM totally clashes with the Cardinal Principle of the Preamble of the Constitution, also Article Four, Section Four, and the Fourteenth and Fifteenth Amendment thereof, it in fact clashes with the Spirit and Theme of the entire Constitution.

Paragraph 21 of Complaint

That this gross and inequitable debasement or multiplication system of their Presidential votes violates the Preamble of the Constitution which states:

"We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

Paragraph 22 of Complaint

Plaintiffs show, Your Honors, that "we, the (Block) states" does not conform with "We, the People", that such gross inequities of the values of a citizen's vote is not conducive to a "more perfect union", that such great variance or debasement of a vote based upon a geographical preference is not "Voting Justice", neither is this great inequity in voting strength conducive to "domestic tranquility", or to the "general welfare" of all the citizens of the United States of America.

Paragraph 23 of Complaint

That the Preamble of the Constitution is not just an empty heading, but is a major integral part of the Constitution itself, that the Spirit of the Preamble should permeate all the laws and judicial

decisions of the United States. The Spirit of the Preamble, more than anything else, obtained the consent of the governed. THE PREAMBLE SHOULD GIVE A CONSTITUTIONAL COMMAND THAT EVERY VOTER IS THE PEER OF EVERY OTHER VOTER IN AMERICA. That the Preamble states the cardinal principle or purpose of our MAGNIFICENT CONSTITUTION and that any statute that sets up a scheme whereby one voter has only seven percent or twenty percent as much voting strength as another voter is in direct conflict with this cardinal principle and HAS to be unconstitutional and void. A system whereby one vote is equal in strength to only a paltry seven percent of another vote, is in conflict with the natural justice (fundamentals) and the higher laws of the decency of man.

Paragraph 24 of Complaint

If the equality principle of the one-man, one-vote applies in a city election and it does, or a county election and it does, or in a state legislature election and it does, or in a congressional district and it does, then surely legally and mathematically, if all the subdivisions are too large to ignore the equality principle, then surely the SUM TOTAL of all these subdivisions HAS to be TOO large to ignore the equality doctrine of voting rights.

Paragraph 25 of Complaint

This BLOCK system violates all the Civil Rights laws ever passed by Congress.

Paragraph 26 of Complaint

The Complainants further show, Your Honors, that the BLOCK ELECTORAL SYSTEM IS unconstitutional because it is not a part of the United States Constitution, that the BLOCK ELECTORAL SYSTEM has never been approved or ratified by the people of the United States either at Convention by ratification or by an Amendment. In short, the BLOCK ELECTORAL SYSTEM as used today has NEVER been CONSENTED to by the People of the United States. The present BLOCK ELECTORAL SYSTEM is unconstitutional and operates without constitutional authority, and the state legislature transcended its power and authority by passing statute to serve the purpose of a constitutional amendment. Further, this BLOCK or VOTER PYRAMID is arbitrary per se.

Paragraph 28 of Complaint

Complainants show that the bulk of the Presidential elector vote is derived from the number of Representatives in Congress. Congress has passed statutes giving each congressional district its own representative. In other words, it is NOT ENOUGH that each state has so many represen-

tatives, each district must have its own. If the elective constitutional principle belongs to the people of a DISTRICT, this principle should also be theirs in the election of the President, THEREFORE, it is not enough just to have a state block vote. That the state block electoral scheme constitutionally clashes with the Federal Statute giving each district its own congressman and therefore conflicts with Article One of Section Two thereof.

Paragraph 30 of Complaint

The crux of the Presidential elector problem is that our FOUNDING FATHERS gave us a representative republic by every standard and that WITHOUT changing the Constitution, the legislatures bent the representative republican procedure into a democratic procedure. That a single act of the legislature cannot bend the Constitution, but to the contrary, the act of legislature must bend to the Constitution.

Paragraph 31 of Complaint

Plaintiffs show that if the present diabolical system of electing the President had been spelled out, that the Constitutional Convention would have never adopted it, nor would it have been ratified by the various state conventions.
conventions.

Paragraph 34 of Complaint

And further, that the FOUNDING FATHERS

took this section and language from the Articles of Confederation, our Nation's first Constitution, which states in Section Five Thereof:" Delegates shall be annually appointed in such manner as the legislature of each State shall direct." Plaintiffs show that the legislature in each and every State, in the normal meaning of the word, did 'appoint' the delegates to the Congress under the Articles of Confederation and that not a single state or legislature permitted the people to vote on the Congressmen to the Confederation Congress. Section V of the Articles of Confederation is set out in full in Exhibit D and made part of this Complaint.

Paragraph 36 of Complaint

Plaintiffs further show, Your Honors, that the Journal of the Constitutional Convention shows without question that the founding fathers INTENDED TO AND DID make our nation a representative republic.

Paragraph 40 of Complaint

That the term 'in such manner as the legislature may direct' clearly refers to 'legislative procedure', such as 'appointed by' majority of both houses of the legislature, or two-thirds (2/3) of both houses, or by legislative committees, or any legislative procedure or manner the legislature deems proper, but in NO sense of the word, abrogation of its responsibilities.

Paragraph 42 of Complaint

Complainants show Your Honors that when this case and the Constitutional rights of Complainants are upheld by the United States Supreme Court, then NO voter in the ENTIRE United States will be able to vote for more than THREE Presidential Electors and that all the voters in the United States will be on an approximately equal basis in a Presidential election and further, that the many evils and abominations of the BLOCK or VOTER PYRAMID SYSTEM will be eliminated.

Paragraph 46 of Complaint

The need of your Complainants, and all voters in class of Complainants, is so GREAT that they request Natural Justice which is, or should be, self-evident.